

Sub

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF THE ISSUANCE OF )  
A SHORELINE SUBSTANTIAL DEVELOPMENT )  
PERMIT ISSUED BY KING COUNTY TO )  
THE STATE OF WASHINGTON, )  
DEPARTMENT OF TRANSPORTATION, )

CHRISTINE M. FOULKS, )  
Appellant, )

v. )

KING COUNTY DEPARTMENT OF )  
PLANNING AND COMMUNITY )  
DEVELOPMENT and STATE OF )  
WASHINGTON, DEPARTMENT OF )  
TRANSPORTATION )

Respondents. )

SHB No. 80-17

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a shorelines substantial development permit issued by King County to the State of Washington, Department of Transportation came on for hearing before the Shorelines Hearings Board, Nat W. Washington, Chairman, David Akana, William A. Johnson and A. M. O'Meara, Members, convened at Kent, Washington, on August

1 20, 1980. Hearing Examiner William A. Harrison presided.

2 Appellant appeared and represented herself. Respondent Department  
3 of Transportation appeared by Ronald Wise and Charles F. Secrest,  
4 Assistant Attorneys General. Respondent King County appeared by  
5 Robert D. Johns, Deputy Prosecuting Attorney. Reporter Dorothy B.  
6 Nevin recorded the proceeding.

7 Witnesses were sworn and testified. Exhibits were examined. From  
8 testimony heard and exhibits examined, the Shorelines Hearings Board  
9 makes these

#### 10 FINDINGS OF FACT

##### 11 I

12 This matter arises in the vicinity of Kent, and concerns a highway  
13 designated SR 516. The purpose for which the pertinent portion of SR  
14 516 was conceived is to connect the state's main north-south freeway,  
15 I-5, with the parallel Valley freeway, SR-167. To this end a diamond  
16 interchange has been constructed both on I-5 and SR-167 with four-lane  
17 construction proceeding from each diamond toward the other. Thus, the  
18 four lane SR-516 now extends from I-5 to Reith Road and from SR-167 to  
19 a lesser, parallel highway, SR 181. These end points are now linked  
20 by an indirect route consisting of Mercer Street (a major street of  
21 Kent's city center) and SR 181.

##### 22 II

23 The proposed development consists of a four lane highway segment,  
24 1.16 mile in length, crossing the Green River and its tributary,  
25 Mullen slough, via a bridge at each crossing. The bridges over both  
26

1 watercourses will stand on concrete piling, and will be approximately  
2 87 feet wide. The Mullen slough bridge will be 266 feet long; the  
3 Green River bridge 453 feet long. The proposed bridges and highway  
4 would displace 29 acres of agricultural land.

5 On July 19, 1979, respondent Department of Transportation (DOT)  
6 applied to King County for a shoreline substantial development permit  
7 under chapter 90.58 RCW, the Shoreline Management Act. There was an  
8 environmental impact statement (EIS) prepared pursuant to chapter  
9 43.21C RCW (SEPA) and considered by King County which granted a  
10 shoreline permit on April 24, 1980. There were 10 conditions placed  
11 upon the shoreline permit by King County including No. 7 requiring  
12 passage ways under the bridges for farm equipment and No. 9 requiring  
13 the unused right of way to be available for farming leases. During  
14 the time preceeding the permit's issuance, the City of Kent, with  
15 agreement of King County, dedicated other land to agricultural use to  
16 mitigate the agricultural land displaced by the proposed highway  
17 segment. From the issuance of this substantial development permit  
18 appellant appeals.

### 19 III

20 Appellant, Christine Foulks, is the originator of a map known as  
21 "County Fresh Farm U-Pick Map" which aids persons interested in  
22 picking their own farm produce in the Puget Sound area. She has  
23 personally picked from the Downey farm which is crossed by the  
24 proposed highway development.

### 25 IV

26 The final EIS discusses six alternatives to the proposed highway  
27

1 segment. These include 1) a North Kent Bypass route, 2) widening  
2 the present Mercer Street route, 3) a combination of Nos. 1) and 2),  
3 4) a south route, 5) public transit, and 6) do-nothing.

4 Acting under its responsibility to issue a bridge permit, the  
5 U. S. Coast Guard has filed notice of intent to prepare an EIS under  
6 the National Environmental Policy Act of 1969 (NEPA). Nothing in the  
7 notice implies a judgment by the Coast Guard that the EIS prepared by  
8 DOT is inadequate unnder SEPA, the state law under which it was  
9 prepared.

10 V

11 Any Conclusion of Law which should be deemed a Finding of Fact is  
12 hereby adopted as such.

13 From these Findings the Board makes the following

14 CONCLUSIONS OF LAW

15 I

16 Respondent, DOT, challenges the standing of appellant to bring  
17 this request for review. We hold that where, as here, the Department  
18 of Ecology and Attorney General have certified that the appellant has  
19 valid reasons to seek review, the appellant is "a person aggrieved"  
20 with standing to request review by this Board under RCW 90.58.180(1).  
21 Moore v. City of Seattle and Kingen, SHB No. 204 (1976, Order on  
22 Motion). In the alternative, even were certification not sufficient  
23 to confer standing we conclude that appellant has standing.

24 Standing has been defined as the possession of "a personal stake  
25 in the outcome of the controversy," so that "the dispute sought to be

1 adjudicated will be presented in an adversary context and in a form  
2 historically viewed as capable of judicial resolution." Flast v.  
3 Cohen, 392 U.S. 83, 101 (1968). This is in contrast to "a mere  
4 interest in the problem." United States v. SCRAP, 412 U.S.  
5 669(1973). Such a stake exists where there is injury in fact to a  
6 personal interest, even though the injury may be suffered by many and  
7 even though such injury may be non-economic. Sierra Club v. Morton,  
8 405 U.S. 727 (1972). Appellant in this matter has shown her personal  
9 participation in picking the produce of the farm which the proposed  
10 highway development would cross, displacing agricultural land in doing  
11 so. Appellant has standing to bring this request for review.

## 12 II

13 Appellant asks us to review whether the substantial development  
14 permit issued by King County is consistent with the King County  
15 Shoreline Master Program (KCSMP) and the provisions of the Shorelines  
16 Management Act. See RCW 90.58.140(2)(b). The Department of Ecology  
17 guidelines, chapter 173-16 WAC, cited by appellant in her request for  
18 review are no longer directly applicable to the issues raised herein  
19 following adoption of the KCSMP.

20 Appellant alleges that the proposed development is inconsistent  
21 with the "Rural" designation of the site provided by the KCSMP; and,  
22 also, is inconsistent with KCSMP goals, objectives and policies for  
23 conservation, recreation, agriculture, landfill, dredging, shoreline  
24 protection and transportation facilities. Appellant has not  
25 elaborated upon this allegation nor proven such inconsistency.

1 Appellant has not proved that the proposed development is inconsistent  
2 with the Shoreline Management Act.

3 III

4 Appellant requests us to review the proposed highway development  
5 under the King County Agricultural Lands Preservation Ordinance, the  
6 King County Comprehensive Plan, the King County Zoning Code and the  
7 City of Kent Zoning Code. These are beyond the review jurisdiction of  
8 this Board. These rules may address concerns also addressed by the  
9 Shoreline Act and KCSMP but appellant has shown no inconsistency of  
10 the proposed development with such concerns.

11 IV

12 Appellant contends that DOT did not prepare an adequate  
13 environmental impact statement. The adequacy of an EIS is a question  
14 of law. Leschi Improve. Coun. v. Washington State Highway Commission,  
15 84 Wash.2d 271 (1974). In any action involving the attack on a  
16 determination by a governmental agency relative to the adequacy of an  
17 EIS, the decision by the governmental agency shall be accorded  
18 substantial weight. RCW 43.21C.090. The adequacy of an EIS must be  
19 judged by application of the rule of reason. Cheney v. Mountlake  
20 Terrace, 87 Wash.2d 338 (1976).

21 Appellant first contends that DOT did not consider alternatives to  
22 the proposed highway development. As we have previously found at  
23 Finding of Fact IV, above, the EIS prepared by DOT identifies and  
24 discusses the relative impacts of six alternatives to the proposed  
25 development. The EIS is not inadequate in that respect.

1 Next, appellant cites the U.S. Coast Guard's notice of intention  
2 to prepare a separate EIS under federal law (NEPA). (Exhibit A-4.)  
3 While concerns under NEPA may differ from those under SEPA, there is  
4 much under the two acts which coincides. For that reason the hearing  
5 in this matter was postponed when appellant brought the Coast Guard  
6 notice to our attention so as to allow appellant to inquire into the  
7 Coast Guard's reasons for its action. At the hearing, appellant  
8 adduced no evidence from the Coast Guard that its action was taken  
9 because of any inadequacy of the EIS under SEPA. Our Finding of Fact  
10 IV, above, that the Coast Guard makes no judgment on the EIS adequacy  
11 under SEPA is supported by the Coast Guard's affidavit introduced by  
12 DOT (Exhibit R-59). The Coast Guard action in the evidence before us  
13 will not support a conclusion that the EIS is inadequate under SEPA,  
14 pursuant to which the EIS was prepared. The EIS has not been shown to  
15 be inadequate under SEPA.

16 V

17 We have carefully considered the other contentions of appellant  
18 and find them to be without merit.

19 VI

20 Any Finding of Fact which should be deemed a Conclusion of Law is  
21 hereby adopted as such.

22 From these Conclusions the Board enters this  
23  
24  
25

ORDER


The shoreline substantial development permit issued by King County to Washington State Department of Transportation is this matter is hereby affirmed.

DONE at Lacey, Washington, this 22<sup>nd</sup> day of October, 1980.

SHORELINES HEARINGS BOARD

  
NAT W. WASHINGTON, Chairman

  
DAVID AKANA, Member

  
WILLIAM A. JOHNSON, Member

  
A. M. O'MEARA, Member